

REMARKS/ARGUMENTS

Claims 1-26, and 28-32 are pending in the application. Claims 1-26 and 28-32 have initially been rejected under 35 U.S.C. §103(a) as being unpatentable over Grube et al. (U.S. Pat. 5,602,916) in view of Anderson, Jr. (U.S. Pat. 5,805,674).

Section 103 Issues

The Office Action cited the combination of Grube and Anderson in rejecting claim 1. In the Applicant's previous amendment, it was noted that the combination of the Grube and Anderson references does not teach continuing operation of the processing system, as recited in claim 1. The present Office Action cites Anderson for disclosing the element of "continuing operation of the processing system." Namely, paragraph 37 the Office Action states "Anderson discloses continuing operation of the processing system, because Anderson discloses that the [stet] within a call made the security level can be adjusted either by increasing or decreasing the security level (see col. 12, lines 37-65)." Referring to the section cited by the Office Action, one can see that all that US 5,805,674 at col. 12, lines 37-65 states is:

"To increase the ability of the system 11 to detect when a non-authorized user is attempting to gain access, every tenth call made from the telephone causes the security level to be adjusted for the duration of the call. The detection of the tenth call is indicated at decision box 226, and the increase in the security level by three levels is performed at box 228. In this way, a user will be required to provide verification information commensurate with the adjusted security level at least once within ten consecutive calls made.

Thus, if a non-authorized user is somehow able to gain access under a relatively low security level, the non-authorized user will be challenged at a higher security level at least once within ten

consecutive calls. The choice of ten consecutive calls is preferred.

However, the determination of the number of consecutive calls is up to the discretion of the particular cellular provider. The operation continues to decision box 230 (FIG. 2D) from either box 226 or 228 to help determine the amount of verification information that must be provided by the user.

The security level to this point in the telephone call is compared at decision box 230 with the security level required for the user to input only a password as the verification information. As set forth in Table 1 previously, a security level of one will require the user to input only a password. A security level above a one will require the user to input more than just a password. Thus, if the security level is one, a gating code indicative of the number of security phrases that the user must provide is set to zero at box 232."

This entire section that has been cited by the Office Action does not discuss how one goes about preventing operation at a lower level of security while continuing operation of said processing system. Rather, it only discusses how one goes about increasing security levels. Furthermore, the Office Action has not addressed the element "while" in pending claim 1.

To clarify the claimed embodiment in claim 1, claim 1 has been amended to recite:

"receiving further information from said outside source";

and

"retrieving a second indicator from said further information received from said outside source"

preventing operation at a lower level of security until a decrease in security levels is indicated by said second indicator; while

continuing operation of said processing system.

Support for these amendments comes from Applicants specification -- for example, see Figs. 1a, 1b, 2 and accompanying text.

These elements are not taught by the cited references. For example, the Office Action relied upon the Anderson reference for the elements of continuing operation of said processing system while preventing operation at a lower level of security. Clearly, Anderson does not teach the amended aspect of claim 1 of: continuing operation of said processing system while preventing operation at a lower level of security until a decrease in security levels is indicated by said second indicator. Anderson does not rely on a second indicator which is received from further information received from the outside source. Instead, the Anderson unit is preprogrammed to periodically raise the security level every 10th phone call. This pre-programming is not caused by a second indicator received from the information stream, i.e., the further information received from the outside source. Thus, claim 1, as clarified by the above amendment, is believed to be in condition for allowance. Claim 2 has been amended to clarify claim 2 in view of the amendment to claim 1. Claims 2-19 depend from claim 1. Therefore, they are believed to be in condition for allowance for at least the same reasons that claim 1 is allowable.

In regard to claim 20, the Office Action states that claim 20 merely recites elements from claims 1 and 12. This is incorrect. Claim 20 recites, for example, the element of "continuing operation of the system at the high level of security until an encrypted authorization message is received by the system from the outside source authorizing a switch to a different level of security." The aspect of an encrypted authorization message is not recited in either claim 1 or claim 20. Therefore, the Examiner has failed to establish a prima facie case of obviousness for claim 20 and claim 20 is believed to be in condition for allowance as written.

In regard to claim 21, claim 21 has been amended to clarify the claimed embodiment. Claim 21 now recites that the datastream is originated by the sending party and the Decreased Security Authorization Code is also originated by the sending party. (See Figs. 1a, 1b, 2 and accompanying text.) The portion of the Grube reference cited by the Office Action refers to a security gateway 103 between the communication units 114 and 115. See, for example, Fig. 1.

Thus, the Grube reference clearly does not disclose a Decreased Security Authorization Code that is originated by the sending party. Applicants' remarks from the previous Amendment filed on October 11, 2004 are also incorporated herein by reference in regard to the Decreased Security Authorization Code. For at least these reasons, claim 21 is believed to be in condition for allowance. Claims 22- 30 depend from claim 21. Therefore, they are believed to be in condition for allowance for at least the same reasons that claim 21 is allowable.

In regard to claim 31, claim 31 has been amended to clarify the claim. Similar to claim 21, claim 31 now recites that the Decreased Security Authorization Code originates from where the message originates -- which Grube does not teach. Thus, claim 31 is allowable for the same reasons that claim 21 is allowable.

In regard to claim 32, it currently indicates that the Decreased Security Authorization Code and transmission are both sent from a transmitter. Thus, it is believed to be in condition for allowance as written.

Combination of Grube and Anderson

The Applicants still respectfully traverse the use of the combination of the Grube reference with the Anderson reference to reject all the claims. It is respectfully noted that two references should not be combined when the proposed modification would render one of the references unsatisfactory for its intended purpose. Furthermore, it is also improper if the proposed modification would change the principle of operation of a reference. The MPEP in §2143.01 notes these well established principles at page 2100-127 of the eighth edition, revised February 2003.

The Examiner has noted that the Grube reference fails to disclose continuing operation of the processing system. Therefore, the Examiner cited the combination of the Grube reference with the Anderson reference so as to satisfy the continuing operation element of the claim. However, it is noted that the Grube reference cannot fulfill its intended purpose if it is combined with the Anderson reference as required in the Office Action. Namely, the Grube reference would be unsatisfactory for its intended purpose if it were to continue operation of its processing system according to the manner described by Anderson. Anderson describes at

column 12, lines 37-64, continuous operation in which the security level in a telephone call is increased every tenth call, in an attempt to detect when a non-authorized user is attempting to gain access. In contrast, the Grube reference at column 7, lines 53-65, indicates that if acknowledgement is not constructed with proper transmission security level parameters, then the process ends and data is not transmitted to the wireless communication system. In addition, the Grube reference transmits a fault message indicating that a secure communication could not be established. If the Grube reference were modified according to the Anderson reference, Grube would fail to stop a breach of security. Therefore, it would not work for its intended purpose and would not be useful as a secure system. The intermittent security check of Anderson, which merely teaches raising security every tenth call, would be insufficient to provide a reliable security system for Grube. Since Grube is directed as its title states towards preventing unauthorized monitoring of wireless data transmissions, the combination of Grube with Anderson clearly would render Grube unsatisfactory for its intended purpose.

Similarly, the MPEP indicates in §2143.02 that the proposed modification of a reference cannot change the principle of operation of the reference. The principle of operation of the Grube reference is to discontinue operation of the processing system in Grube when an unauthorized user is detected. This was noted by the Examiner in the previous Office Action. Thus, to modify Grube with the system of Anderson would necessarily change the principle of operation of Grube. This is not permitted under 35 U.S.C. §103 for purposes of establishing a prima facie case of obviousness.

Thus, the combination of Grube with Anderson under 35 U.S.C. §103 is still respectfully traversed. Since this combination was utilized in rejecting all of the pending claims, it is respectfully requested that the rejection be withdrawn and the claims passed to allowance.

CONCLUSION

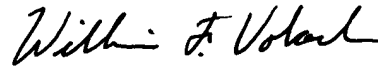
In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

Appl. No. 09/576,516
Amdt. dated May 12, 2005
Reply to Office Action of January 14, 2005

PATENT

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,



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